

**Ordinance Committee Meeting
Tuesday, June 9, 2009 @ 6:30 PM**

ITEM #1

Review the proposed Chapter 82 (1-17) (Purchasing) as it relates responsible employer ordinance.

ITEM #2

Add Chapter 110 Consumption of Marijuana

ITEM #3

Miscellaneous Traffic

ITEM #4

Minutes – May 12, 2009 & May 13, 2009



CHICOPEE CITY COUNCIL
ORDINANCE COMMITTEE

Accepted 6-25-09
DRAFT

MEMBERS

James K. Tillotson, Chairman
George Moreau, Vice-Chairman
Donald Demers
John Vieau
Robert J. Zygarowski

**MINUTES
June 9, 2009**

The following are the minutes of a public hearing held Tuesday, June 9, 2009 at 6:30 PM in the Aldermanic Chambers, Fourth Floor, City Hall Annex, 274 Front Street, Chicopee, MA 01013.

Members Present

Tillotson, Moreau, Demers, Vieau (Arrived 6:31), Zygarowski

Also Present

Councilor Krampits (Ward 5), Councilor Swider (Ward 2)
Dan Garvey, (Associate City Solicitor), John Ferraro (Chief of Police), Brian Salamon (Purchasing Agent)

The meeting was called to order at 6:30 PM

ITEM #1

BE IT ORDAINED that the City of Chicopee acting under the provisions of Massachusetts General Laws, as amended, and of any and every power and authority it thereunto enabling under its charter, hereby amends the Ordinances of the City of Chicopee by adding a new Section 82-17 as follows:

Responsible Employer Ordinance
City of Chicopee

- A. All bidders and all subcontractors, including subcontractors that are not subject to MGL c. 149, 44F, when bidding for projects subject to MGL c. 49, 44A (2) and MGL c. 30, 39M, shall as a condition for bidding verify under oath and in writing at the time of bidding that they comply with the following conditions for bidding or subcontracting and, for the duration of the project, shall comply with the following obligations:
1. The Bidder and all subcontractors under the bidder shall make a best faith effort to employ local workers when qualified local workers are available for work.
 2. The Bidder and all subcontractors under the Bidder must comply with the obligations established under MGL c. 149 to pay the appropriate lawful prevailing wage rates to their employees.

3. The Bidder and all subcontractors under the Bidder must at the time of bidding maintain or participate in a bona fide apprentice training program as defined by MGL c. 23, 11H and 11I for each apprentice training trade or occupation represented in their workforce that is approved by the Division of Apprentice Training and the Department of Labor and Workforce Development and must register all apprentices with the Division and abide by the apprentice to journeyman ratio for each trade prescribed therein in the performance of any work on the project.
4. The bidder and all subcontractors under the bidder must at the time of bidding furnish at their expense, hospitalization and medical benefits and/or coverage for all their mechanics and apprentices, teamsters, chauffeurs and laborers (as those employee classifications are used in MGL c. 149, 26) that it at least comparable in value to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft. The cost of providing such benefits shall be treated in accordance with the prevailing wage law.
5. The Bidder and all subcontractors under the Bidder must maintain appropriate industrial accident insurance coverage for all the employees on the project in accordance with MGL c. 152.
6. The Bidder and all subcontractors under the Bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. (See MGL c.149, 148B on employee classification).
7. The Bidder and all subcontractors under the bidder must at the time of bidding certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupation Safety and Health Administration at the time the employee begins work. The bidder and all subcontractors shall furnish documentation of successful completion at the time the employee begins work. The bidder and all subcontractors shall furnish documentation of successful completion at the time of the employee begins work. Said course must be at least 10 hours in duration.
8. The Bidder and all subcontractors under the Bidder must at the time of bidding furnish, at their expense, hospitalization and medical coverage for all their workers at a level not less than that available through the Massachusetts Health Care Connector.
- B. A bid submitted by any general bidder or by any subcontractor under the general bidder that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract for work outside the scope of MGL c.149, 44F shall be awarded to a contractor that does not comply with this ordinance.
- C. All Bidders and subcontractors under the Bidder who are awarded or who otherwise obtain contracts on the projects subject to MGL c.149, 44A (2) or MGL c.30 39M shall comply with every one of the obligations numbered 1 through 8 set forth in paragraph A above for the entire duration of their work on the project, and an officer of each Bidder or subcontractor under the Bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.
- D. Any Bidder or subcontractor under the Bidder who fails to comply with any one of the obligations 1 through 8 as set forth in Paragraph A above for any period of time shall be, at the sole discretion of the City of Chicopee, subject to one or more of the following sanctions: (1) cessation of work on the project

until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City of Chicopee in the amount of 5% of the dollar value of the contract.

- E. In addition to the sanctions outlined in Paragraph D above, a general bidder or contractor shall be equally liable for the violations of its subcontractor(s) with the exception of violations arising from work performed pursuant by subcontractors that are subject to MGL c.149 44F. Any contractor or subcontractor that has been determined by the City of Chicopee or by any court or agency to have violated any of the obligations set forth in Paragraphs A and C above shall be barred from performing any work on any future projects for six months for a first violation, three years for a second violation and permanently for a third violation.
- F. If any provision of this ordinance, or the application of such provision to any person, entity or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this policy, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall be not affected thereby.
- G. This ordinance does not apply to construction projects for which the low general bid was less than \$250,000.00; or to work performed pursuant to subcontracts that are subject to MGL c.149 that were bid for less than \$25,000.00; or to rebids for construction projects for which the City received fewer than three bids.
- H. The provisions of this ordinance shall not apply to construction projects for which the low general bid was less than \$250,000.00 or to work performed pursuant to subcontracts that are subject to MGL c.149 44F and that were less than \$25,000.00. These thresholds shall be adjusted every five years based on changes in the Consumer Price Index, rounded to the nearest \$5,000.00.

Dan Garvey presented the committee with a revised Chapter 82 (Purchasing) Ordinance. This is just a proposal and it includes some parts of the above Mayor's proposed ordinance. The difference with the new version is apprentice programs requirements, medical insurance requirements and enforcement. Dan stated that revisions to Chapter 82 are necessary due to changes in state law. This new proposed ordinance would take its first reading at the City Council meeting on Tuesday and be referred back to the Ordinance Committee.

CHAPTER 82

[HISTORY: Adopted by the Board of Aldermen of the City of Chicopee as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

§ 82-1 Title.

A. This article is an ordinance establishing a Department of Purchases in the administrative service of the City of Chicopee, creating the office of City Purchasing Agent, setting forth the powers and duties of the City Purchasing Agent, establishing purchasing procedures and prescribing penalties for the violation of its provisions.

B. This article shall be known and may be cited as the "Purchasing Ordinance of the City of Chicopee."

§ 82-2 Department of Purchases established. Adoption of the General Laws, Sound Business Practices.

There is hereby established in the administrative service of the City of Chicopee the Department of Purchases and, in said Department, the office of City Purchasing Agent.

- A. The City shall comply with M.G.L. Chapter 30B, as it may hereafter be amended, in the procurement and surplus disposition of those items to which said law applies, including the acquisition and disposition of Real Estate. Procurement and surplus disposition of items not subject to M.G. L. Chapter 30B shall be undertaken in accordance with the applicable statutes within which they fall, including M.G.L. Chapter 30 § 39M, Chapter 149 and Chapter 7 §§ 38A1/2 to 38O.
- B. The City shall exercise sound business practices for all purchases.

§ 82-3 City Purchasing Agent.

A. DUTIES

The City Purchasing Agent shall be the head and shall have general supervision of the Department of Purchases. He shall have all the powers and duties prescribed by this chapter. The City Purchasing Agent shall be the Chief Procurement Officer for the City as required by M.G.L. Chapter 30B.

B. SPECIFICATIONS.

(1) Appointment. The Purchasing Agent shall be appointed by the Mayor.

(2) Term of office. The term of office shall expire January 1, 1975. Subsequent terms of office shall be for a period of six (6) years.

(3) Experience requirements. The Purchasing Agent shall have had, prior to his appointment, at least five (5) years' experience in purchasing in a position of major responsibility such as purchasing agent, assistant purchasing agent, buyer or similar grade with public or business enterprises which operate on justified requisitions based on store control with perpetual inventories of stock on hand. He shall also have had a bachelor's degree from a four-year accredited college or university, preferably with a major in business administration, economics, commerce or some field of business.

(4) In the absence, inability to serve, removal, resignation or death of the Purchasing Agent, the Mayor shall designate the person who shall carry out the duties of the Purchasing Agent until his return or until his successor shall have been appointed, such appointment to be for the unexpired term of the Purchasing Agent.

(5) Bond. The City Purchasing Agent shall furnish bond for the faithful performance of his duties in a sum to be determined by the Mayor.

(6) Additional employees.

(a) There shall be established additional employees of the Central Purchasing Agency as follows:

[1] One (1) senior clerical assistant who shall be appointed by the Mayor and whose term of office shall be for a period of four (4) years.

[2] There may be Two (2) additional clerical assistants.

[3] One (1) Assistant Purchasing Agent who shall be appointed by the Mayor for a term of five (5) years and shall furnish bond for the faithful performance of his duties in a sum to be determined by the Mayor. The Assistant Purchasing Agent shall be under the direct supervision of the Purchasing Agent. He shall have at least two (2) years experience in purchasing with either public or private enterprises.

(b) The persons employed in the positions described herein shall be under the direct supervision of the Purchasing Agent.

C. POWERS AND DUTIES OF PURCHASING AGENT

(1) Be responsible for the procurement and disposal of all supplies, materials, equipment and property for all departments and offices of the City, including contracts for construction, reconstruction or alteration of City buildings or property and any services incident thereto and all laws covered under the Uniform Procurement Act, M.G.L. Chapter 30 § 39M, Chapter 30B, Chapter 7 §§ 38A1/2 to 38O and Chapter 149. It shall be the responsibility of the Purchasing Agent to assure that all procurements subject to these statutes are conducted in accordance therewith.

Have authority to order or make inventories of the supplies, materials, equipment and furnishings of any department. Any department possessing excess or surplus personal property of any kind shall not sell, exchange, transfer or dispose thereof without first certifying such personal property as surplus to the Purchasing Agent; and, thereupon, the Purchasing Agent shall circularize all departments as to their needs for such surplus personal property, and if such need is determined, the Purchasing Agent may order transfer of such property from one department to another.

If the value of property to be disposed of is estimated to be more than \$500.00, the Purchasing Department shall advertise for bids in a daily paper having a general circulation in the City for at least 2 consecutive weeks and shall award the sale of such property to the highest responsible bidder. If it is in the best interest of the City, the Purchasing Agent may reject any and all bids. When the value of the property to be sold is less than \$500.00, the Purchasing Agent may, without advertising, dispose of the property in the best manner, using sound business practices.

All disposition of surplus property shall first be subject to a vote of the City Property Committee prior to the Purchasing Agent acting thereupon.

(2) Encouraging competitions. He shall discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.

(3) Rules and regulations. He shall establish reasonable regulations and policies, not inconsistent with the statutes and this ordinance to carry out the duties of the office.

(4) Purchasing analysis. He shall keep informed of current developments in the field of purchasing, prices, market conditions and new products and secure for the city the benefits of research done in the field of purchasing by the Massachusetts Office of the Inspector General.

(5) Forms. He shall prescribe and maintain such forms as he shall find reasonably necessary to the operation of this chapter, provided that all such forms shall have the approval of the City Auditor prior to their enforcement.

(6) Standard nomenclature. He shall prepare and adopt a standard purchasing nomenclature for using agencies and suppliers.

(7) Vendors' catalog file. He shall prepare, adopt and maintain a vendors' catalog file. Said catalog shall be filed according to materials and shall contain descriptions of vendors' commodities, prices and discounts.

(8) Bulk purchase. He shall explore the possibilities of buying in bulk so as to take full advantage of discounts.

(9) Federal tax exemptions. He shall act so as to procure for the city all federal tax exemptions to which it is entitled.

(10) Cooperation with Auditing Department. He shall cooperate with the City Auditor so as to secure the maximum efficiency in budgeting and accounting.

(11) Disqualification of bidders. He shall have the authority, with the concurrence of the Mayor, to declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time.

§ 82-4. Purchasing through Department required.

Except as herein provided or as may be specifically authorized by the Purchasing Agent or as specifically exempt under provisions of the laws of the commonwealth, it shall be unlawful for any city employee or official to purchase any supplies or services other than through the Purchasing Department and in accordance with this chapter.

§ 82-5.

A. There is hereby established in the administrative service of the City of Chicopee a standardization and specification process.

B. Process. In cooperation with the relevant department heads or their designees, the Purchasing Agent shall establish standards and specifications for the City of Chicopee.

C. Duties of Purchasing Agent. It shall be the duty of the Purchasing Agent:

(1) Classification: to classify all the supplies used by the various branches of the city government.

(2) Standardization: to establish as standards the minimum number of quantity, sizes and varieties of supplies consistent with the successful operation of the city government.

(3) Specifications: to assist in the preparation and approve all written specifications. (4) Circulation: to make available to any interested party copies of such classifications, standardizations and specifications.

D. Effect of establishment. After its establishment, each standard specification shall, until revised, apply alike in terms and effect to every future purchase and contract for the supply described in such specifications; however, the Agent shall have the authority to exempt any using agency of the city if requested to do so for a valid purpose in writing by the head of the using agency.

E. Consultation with using agencies. The Agent shall consult with heads and other officials of the using agencies to determine their precise requirements and shall endeavor to prescribe those standards which meet the needs of the majority of such agencies.

F. Nature of specifications. All specifications shall be definite and certain and shall permit competition; provided, however, that the provisions of this subsection shall not apply to noncompetitive types and kinds of supplies

§ 82-6 Conflict of interest

A. The provisions of the Conflict of Interest Statute, MGL C. 268A, and Section 59 of the City Charter of the City of Chicopee shall prevail in matters pertaining to the conduct of city employees.

B. Gifts and gratuities. The Purchasing Agent and every officer and employee of the city are expressly prohibited from accepting, directly or indirectly from any person, firm, corporation or organization to which any purchase order or contract is or might be awarded any rebate, gift or anything of value whatsoever, except where given for the use or benefit of the City of Chicopee.

section shall apply to all construction projects awarded by the City of Chicopee.

1. The Bidder and all subcontractors under the Bidder shall make a good faith effort to employ local workers when qualified local workers are available for work.
2. The Bidder and all subcontractors under the Bidder must comply with the obligations established under M.G.L. c. 149 to pay the appropriate lawful prevailing wage rates to their employees.
3. The Bidder and all subcontractors under the Bidder must maintain appropriate industrial accident insurance coverage for all the employees on the project in accordance with M.G.L. c. 152.
4. The Bidder and all subcontractors under the Bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. (See M.G.L. c. 149, §148B on employee classification).
7. The Bidder and all subcontractors under the bidder must at the time of bidding certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration at the time the employee begins

work. The Bidder and all subcontractors shall furnish documentation of successful completion at the time the employee begins work.

8. The Bidder and all subcontractors under the Bidder must at the time of bidding furnish, at their expense, hospitalization and medical coverage for all their workers at a level not less than that available through the Massachusetts Health Care Connector.
9. All Bidders and subcontractors under the Bidder who are awarded or who otherwise obtain construction contracts with the City of Chicopee shall comply with all of the above detailed obligation at the commencement of the contract and throughout full contract period
10. Any Bidder or subcontractor under the Bidder who fails to comply with the obligation detailed above shall be subject to any one or more of the following sanctions as determined by the Building Commission and Purchasing Agent with the concurrence of the Mayor: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City of Chicopee in the amount of 5% of the dollar value of the contract.
11. If any provision of this ordinance, or the application of such provision to any person, entity or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this section, or the application of such section to persons or circumstances, other than that which is enjoined or held invalid shall be not affected thereby.

§ 82-8

A. The City of Chicopee shall conform to state standards in all bidding processes to conform to state statute MGL C. 30B, §§ 4, 5, 6 and 7, to allow for procurement contracts up to ten thousand dollars (\$25,000.) to be made without the requirement for formal, advertised bidding, but do require three (3) written quotations from at least three (3) suppliers.

B. Every contract shall provide that an item equal to that named or described in said specifications may be furnished. An item shall be considered equal to the item so named or described if it is at least equal in quality, durability, appearance, strength and design; it will

perform at least equally the function imposed by the general design for the work being contracted for or material being purchased; and it conforms substantially, even with deviations, to the detailed requirements for the item in said specification.

C. Bidders' list. The Agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a bidders' list, which the Agent shall maintain, by sending them a copy of such newspaper notice or such notice as will acquaint them with the proposed purchase or sale. In any case, invitation sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

D. Bid deposits. When deemed necessary by the Agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Agent has required such. A successful bidder shall forfeit any surety required by the Agent upon failure on his part to enter a contract within thirty (30) days after the award. All such bid deposits or other security shall be deposited with the City Treasurer.

E. Bid opening procedure.

(1) Sealed. Bids shall be submitted to the Purchasing Agent and shall be identified as bids on the envelope.

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices.

(3) Tabulation. A tabulation of all bids received shall be posted for public inspection.

F. Rejection of bids.

(1) The Agent shall have the authority to reject all bids, parts of all bids or all bids for any one (1) or more supplies or contractual services included in the proposed contract when the public interest will be served thereby.

(2) Bidders in default to city. The Purchasing Agent, with the concurrence of the Mayor, may not accept the bid of a contractor who is in default on the payment of taxes, licenses or other moneys due the city.

G. Award of contract.

(1) Authority of Purchasing Agent. The Agent shall have the authority to award contracts within the purview of this chapter.

(2) Lowest responsible bidder. Contracts shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, the Purchasing Agent shall consider:

(a) The ability, capacity and skill of the bidder to perform the contract or provide the service required.

(b) Whether the bidder can perform the service required and provide the service promptly or within the time specified, without delay or interference.

(c) The character, integrity, reputation, judgment, experience and efficiency of the bidder.

(d) The quality of performance of previous contracts or services.

(e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.

(f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.

(g) The quality, availability and adaptability of the supplies or contractual services to the particular use required.

(h) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

(i) The number and scope of conditions attached to the bid.

(3) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reason for placing the order elsewhere shall be prepared by the Purchasing Agent and filed with the other papers relating to the transaction.

(4) Tie bids

(a) Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

(b) Outside vendors. Where Subsection G(4)(a) is not in effect, the Purchasing Agent shall award the contract to one (1) of the tie bidders by drawing lots in public.

(5) Performance bonds. The Purchasing Agent shall recommend to the Mayor the requirement for a performance bond, in accordance with the provisions of the City Charter of the City of Chicopee.

H. Prohibition against subdivision. No contract or purchase shall be subdivided to avoid the requirements of this section.

§ 82-9 Cooperative purchasing.

The Purchasing Agent shall have the authority to join other units of government (federal, state, county, municipal and municipal subdivisions, including such quasi-municipal agencies as water districts, sewer districts, etc.) in cooperative purchasing plans when the best interest of the city would be served thereby and such action is in accordance with and pursuant to law.

§ 82-10 Other duties of Agent.

The Purchasing Agent shall perform such other duties related to the functions, duties and authorities set forth herein as may be prescribed by the Mayor or any applicable state or local laws and ordinances.

§ 82-11 Annual report.

The City Purchasing Agent shall submit to the Mayor and the Board of Aldermen an annual report on the work of his office in carrying out the provisions of this article.

Brian Salamon suggested that language be included for waiver provisions.

PUBLIC INPUT

Jon Avery, 17 Arlmont Street, spoke on the matter of apprentice programs. A good contractor will offer apprentice programs to better future generations.

Jack Hugh, Worcester Redevelopment Authority, stated that there is no evidence that if the ordinance was adopted project cost would increase. He also stated that there is no basis for limiting competition. He further stated that the apprentice programs require contractors to invest in the future.

Steve Carrington, Murphy Lane, spoke on the matter for requiring proper healthcare benefits from contractors for their employees.

Jason Durant, South Hadley, Representing the Carpenters Union, gave an example of a contractor who subcontracted the floor work for Chicopee Comprehensive High School who violated several laws.

Motion made to table the Mayor's proposed ordinance and move the new proposed Chapter 82 ordinance forward.

Committee vote 4 – 0 favorable for a first reading. Councilor Demers abstained because he receives a pension from the Carpenters Union.

ITEM #2

BE IT ORDAINED by the City Council that the Code of the City of Chicopee for the Year 1991, as amended be further amended as follows:

Add Chapter 110

PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL

A. Application. No person shall smoke, ingest, or otherwise use or consume marijuana or tetrahydrocannabinol (as defined in G.L. c. 94C, Section 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the city; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public.

B. Enforcement. This ordinance may be enforced through lawful means in law or in equity by non criminal disposition pursuant to G.L. c. 40, Section 21D, by the Chicopee Police Chief his/her agents or any police officer.

C. Fine. The fine for the first violation of this ordinance shall be one hundred dollars (\$100), two hundred dollars (\$200) for the second violation, and three hundred dollars (\$300) for the third and subsequent violations. Any penalty imposed under this ordinance shall be in addition to any civil penalty imposed under G.L. c. 94C, Section 32L.

The Police Chief stated that he recommends that the fine be set at \$300. He stated that it would be difficult to monitor which offense a person was receiving.

PUBLIC INPUT

Brian Peltier, 14 Woodcrest Court, stated that an alcohol offense is only \$50 why \$300 for the marijuana offense.

Councilor Zygarowski stated that this ordinance provides a tool for the police officer.

Motion made by Councilor Zygarowski to approve.

Committee vote 5 – 0 favorable.

ITEM #3

Jackson Street

West side. Between CEL pole #2 and pole #3

PARKING PROHIBITED THIS SIDE OF STREET

Committee vote 5 – 0 favorable.

ITEM #4

CELIA STREET

Both sides. From Dare Way to James Street

PARKING PROHIBITED

Committee vote 5 – 0 favorable.

ITEM #5

Minutes – May 12, 2009 and May 13, 2009. Motion made to accept both. Motion passed.

Meeting adjourned at 7:56 PM.